

**REMARKS**

The Office Action mailed April 16, 2008 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Claim Status and Amendment of the Claims

Claims 1-61 are currently pending.

No claims stand allowed.

The 35 U.S.C. § 102 Rejection

Claims 1-5, 11, 12, 18-20, 26-28, 34-36, 42-46, 49, 50, 52-55, 58, 59, 61 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Veeneman et al.,<sup>1</sup> of which Claims 1, 11, 19, 27, 35, 44, 49, 53, and 58 are independent claims.<sup>2</sup> This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>3</sup>

Claim 1

Claim 1 recites:

A method for creating a bundle of soft permanent virtual circuits (SPVCs) coupling from a source end to a destination end via a communications network, the method comprising:

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<sup>1</sup> U.S. Patent No. 6,771,650 to Veeneman et al.

<sup>2</sup> Office Action mailed April 16, 2008 at ¶ 2.

<sup>3</sup> Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

creating an SPVC bundle for the source end, the SPVC bundle comprising a plurality of member SPVCs, each member SPVC comprising a permanent virtual circuit (PVC) and a switched virtual circuit (SVC), each of the member SPVCs being associated with a respective connection characteristic and coupling to a same destination; and  
transmitting, from the source end to the destination end, an SPVC setup message containing configuration information of the SPVC bundle, the configuration information comprising bumping rules for individual member SPVCs, the bumping rules specifying to which member SPVC traffic should be bumped when a specific member SPVC fails.

The Examiner states,

... Veeneman teaches a method for creating a bundle of soft permanent virtual circuits (SPVCs) coupling from a source end to a destination end via a communications network [Fig. 4], comprising: creating an SPVC bundle for the source end [Col. 3, lines 34-38, where bundle of paths are created by multiple connections] the SPVC bundle comprising a plurality of member SPVCs [Fig. 2, 361701, each member SPVC comprising a permanent virtual circuit (PVC) and a switched virtual circuit (SVC) [Col. 3, lines 34-36], each of the member SPVCs being associated with a respective connection characteristic and coupling to a same destination [Fig. 4, bundle of paths going from x to y and each path has a cost associated with it]; and transmitting, from the source end to the destination end, an SPVC setup message containing configuration information of the SPVC bundle [Col. 4, lines 55-64], the configuration information comprising bumping rules for individual member SPVCs, the bumping rules specifying to which member SPVC traffic should be bumped when a specific member SPVC fails [Col 6, lines 42-55, uses different circuits if one of the circuits fail].<sup>4</sup>

The Applicants respectfully disagree for the reasons set forth below.

In support of the Examiner's contention that Veeneman et al. discloses transmitting a setup message containing configuration information of the SPVC bundle, the Examiner refers to the following portion of Veeneman et al.:

Having chosen the links, the 46020 would connect the HSPVC via PVC cross-connects in the PVC clouds, and via the SPVC connect from the base of link 2 to the base of link 3 in the SPVC cloud.

Note that if the *links* the path takes to enter and leave the SPVC cloud reside on the same node inside the cloud, the 46020 will request that node to perform a PVC cross-connect for the path rather than requesting it to connect an SPVC. In that case the path would not have an SPVC portion.<sup>5</sup>

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<sup>4</sup> Office Action dated April 16, 2008, pp. 2-3.

And in support of the Examiner's contention that Veeneman et al. discloses the configuration information comprising bumping rules for individual member SPVCs, the bumping rules specifying to which member SPVC traffic should be bumped when a specific member SPVC fails, the Examiner refers to the following portion of Veeneman et al.:

- 1) The call is routed via links L1 and L6 and goes WFR due to the SPVC failure to connect;
- 2) Link L6 is disabled for the call;
- 3) After the WFR retrial period the call is routed through links L3 and L4. CAC refusal is issued for the PVC connection inside the SPVC cloud, and the call goes WFR again;
- 4) Link L3 is disabled for the call;
- 5) After the WFR retrial period the call is routed through links L2 and L5 and goes WFR due to the SPVC failure to connect;
- 6) Link L2 is disabled for the call;
- 7) After the WFR retrial period the call is routed through links L1 and L5 and connects.<sup>6</sup>

However, the above portions of Veeneman et al. cited by the Examiner say nothing about transmitting a setup message, let alone transmitting a setup message containing setup information for an SPVC bundle. Furthermore, the above portions of Veeneman et al. cited by the Examiner say nothing about the configuration message, which is transmitted in the setup message, comprises bumping rules for individual member SPVCs, the bumping rules specifying to which member SPVC traffic should be bumped when a specific member SPVC fails. As each and every element as set forth in Claim 1 is not found in Veeneman et al., the 35 U.S.C. § 102 rejection is unsupported by the cited art of record and the rejection must be withdrawn.

Independent Claims 11, 19, 27, 35, 44, 49, 53, and 58

Independent claims 11, 19, 27, 35, 44, 49, 53, and 58 also recite in part that the configuration information comprises bumping rules for individual member SPVCs, where the

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<sup>5</sup> Veeneman et al. at col 4 ll. 55-64.

bumping rules specify to which member SPVC traffic should be bumped when a specific member SPVC fails. Thus, the arguments made above with respect to Claim 1 apply here as well. Claim 1 being allowable, Claims 11, 19, 27, 35, 44, 49, 53, and 58 must also be allowable for at least the same reasons as for Claim 1.

Dependent Claims 2-5, 12, 18, 20, 26, 28, 34, 36, 42-43, 45-46, 50, 52, 54-55, 59, and 61

Claims 2-5 depend from Claim 1. Claims 12 and 18 depend from Claim 11. Claims 20 and 26 depend from Claim 19. Claims 28 and 34 depend from Claim 27. Claims 36 and 42-43 depend from Claim 35. Claims 45-46 depend from Claim 44. Claims 50 and 52 depend from Claim 49. Claims 54-55 depend from Claim 53. Claims 59 and 61 depend from Claim 58. Claims 1, 11, 19, 27, 35, 44, 49, 53, and 58 being allowable, Claims 2-5, 12, 18, 20, 26, 28, 34, 36, 42-43, 45-46, 50, 52, 54-55, 59, and 61 must also be allowable.

The First 35 U.S.C. § 103 Rejection

Claims 6, 7, 13, 14, 21, 22, 29, 30, 37, 38 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Veeneman in view of Allan et al.,<sup>7</sup> among which no claims are independent claims.<sup>8</sup> This rejection is respectfully traversed.

According to the Manual of Patent Examining Procedure (M.P.E.P.),

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable

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<sup>6</sup> Veeneman et al., at col 6 ll. 42-55.

<sup>7</sup> U.S. Patent No. 5,946,313 to Allan et al.

<sup>8</sup> Office Action at ¶ 3.

expectation of success must both be found in the prior art, not in the applicant's disclosure.<sup>9</sup>

The 35 U.S.C. § 102 rejection of independent Claims 1, 11, 19, 27, and 35 based on Veeneman et al. is unsupported by the art, as each and every element as set forth in the claims are not found, either expressly or inherently described, in Veeneman et al. Accordingly, the 35 U.S.C. § 103(a) of dependent claims 6, 7, 13, 14, 21, 22, 29, 30, 37, and 38 based on Veeneman et al. and further in view of Allan et al. is unsupported by the art because the combination of Veeneman et al. and Allan et al. does not teach all claim limitations.

#### The Second 35 U.S.C. § 103 Rejection

Claims 8, 15, 23, 31, 39 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Veeneman in view of Allan et al.,<sup>10</sup> and further in view of Chang et al.,<sup>11</sup> among which no claims are independent claims.<sup>12</sup> This rejection is respectfully traversed. The 35 U.S.C. § 102 rejection of independent Claims 1, 11, 19, 27, and 35 based on Veeneman et al. is unsupported by the art, as each and every element as set forth in the claim is not found, either expressly or inherently described, in Veeneman et al. Accordingly, the 35 U.S.C. § 103(a) of dependent claims 8, 15, 23, 31, and 39 based on Veeneman et al. in view of Allan et al. and further in view of Chang et al. is unsupported by the art because the combination of Veeneman et al., Allan et al., and Chang et al. does not teach all claim limitations.

#### The Third 35 U.S.C. § 103 Rejection

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<sup>9</sup> M.P.E.P. § 2143.

<sup>10</sup> U.S. Patent No. 5,946,313 to Allan et al.

<sup>11</sup> U.S. Patent No. 7,133,420 to Chang et al.

<sup>12</sup> Office Action at ¶ 4.

Claims 9, 16, 24, 32, 40, 47, 56 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Veeneman in view of Chang et al.,<sup>13</sup> among which no claims are independent claims.<sup>14</sup> This rejection is respectfully traversed. This rejection is respectfully traversed. The 35 U.S.C. § 102 rejection of independent Claims 1, 11, 19, 27, 35, and 53 based on Veeneman et al. is unsupported by the art, as each and every element as set forth in the claims is not found, either expressly or inherently described, in Veeneman et al. Accordingly, the 35 U.S.C. § 103(a) of dependent claims 9, 16, 24, 32, 40, 47, and 56 based on Veeneman et al. and further in view of Chang et al. is unsupported by the art because the combination of Veeneman et al. and Chang et al. does not teach all claim limitations.

#### The Fourth 35 U.S.C. § 103 Rejection

Claims 10, 17, 25, 33, 41, 48, 51, 47, 60 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Veeneman in view of Hamedani et al.<sup>15</sup> <sup>16</sup> This rejection is respectfully traversed. The 35 U.S.C. § 102 rejection of independent Claims 1, 11, 19, 27, 35, 53, and 58 based on Veeneman et al. is unsupported by the art, as each and every element as set forth in the claim is not found, either expressly or inherently described, in Veeneman et al. Accordingly, the 35 U.S.C. § 103(a) of dependent claims 10, 17, 25, 33, 41, 48, 51, and 60 based on Veeneman et al. and further in view of Hamedani et al. is unsupported by the art because the combination of Veeneman et al. and Hamedani et al. does not teach all claim limitations.

#### Claims 44-52

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<sup>13</sup> U.S. Patent No. 7,133,420 to Chang et al.

<sup>14</sup> Office Action at ¶ 5.

<sup>15</sup> U.S. Patent No. 6,560,242 to Hamedani et al.

<sup>16</sup> Office Action at ¶ 6.

Claims 44-52 are means-plus-function claims. In support of the 35 U.S.C. § 102 rejection of Claims 44-46, 49-50, and 52, and in the support of the 35 U.S.C. § 103 rejections of Claims 47-48 and 51, the Examiner refers to substantially the same portions of the cited references used in the Examiner's rejection of method claims and non-means-plus-function apparatus claims.

The Examiner is referred to the U.S. Patent and Trademark Office document entitled "Examination Guidelines For Claims Reciting A "Means or Step Plus Function" Limitation In Accordance With 35 U.S.C § 112, 6<sup>th</sup> Paragraph" ("Guidelines"). The Guidelines state:

... Per our holding, the 'broadest reasonable interpretation' that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, *the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a Patentability determination ...*

... [The] examiner shall interpret a § 112, 6th paragraph "means or step plus function" limitation in a claim as limited to the corresponding structure, materials or acts described in the specification and equivalents thereof in acts accordance with the following guidelines.<sup>17</sup>

The Guidelines state further:

... if a prior art reference teaches identity of function to that specified in a claim, then under Donaldson an examiner carries the initial burden of proof for showing that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function.<sup>18</sup>

As Claims 44-52 of the present application are means-plus-function claims they cannot be said to be drawn to identical subject matter as the method claims and the non-means-plus-function apparatus claims. Furthermore, the Examiner has not shown for each means-plus-function claim, that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or

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<sup>17</sup> "Examination Guidelines For Claims Reciting A "Means or Step Plus Function" Limitation In Accordance With 35 U.S.C § 112, 6th Paragraph," U.S. Patent and Trademark Office, <http://www.uspto.gov/web/offices/pac/dapp/pdf/exmgu.pdf>, p. 1. (emphasis added)

<sup>18</sup> Guidelines at p. 3. (emphasis in original)

step plus function. Therefore, the Examiner has not established a *prima facie* case. Accordingly, both the 35 U.S.C. § 102 rejection of Claims 44-46, 49-50, and 52, and the 35 U.S.C. § 103 rejections of Claims 47-48 and 51 must be withdrawn.

In response to the above arguments, the Examiner states:

Regarding claim 44-52, applicant argues that examiner refers to substantially the same portions of the cited references used for other claims. However, the examiner looked into applicant's specification for means plus interpretation at the time of 1<sup>st</sup> office action. The cited portions teach the limitation described in specification therefore maintains the rejection to claims 44-52.<sup>19</sup>

The Applicants respectfully submit the M.P.E.P. requires more than a conclusory statement indicating the Examiner “looked into” the specification. Again, under Donaldson, the examiner carries the initial burden of proof for showing that the prior art structure is the same as or equivalent to the structure described in the specification which has been identified as corresponding to the claimed means plus function. As the Examiner has not *showed* that the prior art structure is the same as or equivalent to the structure described in the specification which has been identified as corresponding to the claimed means plus function, the Examiner has not met his initial burden.

In response to the above argument, the Examiner states:

Applicant argues that examiner has not shown for each means-plus-function, that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or steps plus function. However, examiner disagrees. Examiner has shown in prior art for each meansplus-function the structure and acts described in the specification as corresponding to the claimed means function.<sup>20</sup>

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<sup>19</sup> Office Action mailed November 5, 2007, at p. 4.



Again, the Applicants respectfully submit the Examiner has not established a *prima facie* case because the Examiner has not made the showing required by the M.P.E.P. Under Donaldson, the examiner carries the initial burden of proof for showing that the prior art structure is the same as or equivalent to the structure described in the specification which has been identified as corresponding to the claimed means plus function. The Applicants respectfully submit this showing is not made merely by stating it has been done. The Examiner's rejection of Claims 44-52 is devoid of any reference to structure described in the specification. Therefore, the Examiner's rejection of the same claims completely fails to show that the prior art structure is the same as or equivalent to the structure described in the specification which has been identified as corresponding to the claimed means plus function. Accordingly, a *prima facie* case has not been established and both the 35 U.S.C. § 102 rejection of Claims 44-46, 49-50, and 52, and the 35 U.S.C. § 103 rejections of Claims 47-48 and 51 must be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

#### Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

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<sup>20</sup> Office Action at p. 2.

The Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,

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